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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1968**

## No. 841

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TOMMIE E. L. WILLIAMS,

*Petitioner,*

*v.*

CITY OF OKLAHOMA CITY, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

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## BRIEF OF PETITIONER

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**PETITION FOR CERTIORARI FILED APRIL 29, 1968**
**CERTIORARI GRANTED DECEMBER 16, 1968**

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# IN THE SUPREME COURT OF THE UNITED STATES

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## No. 841

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ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

## BRIEF OF PETITIONER

Petitioner prays that Respondents be required to furnish him a written record *forma pauperis* to be used in appealing his conviction of a misdemeanor in municipal court to the Court of Criminal Appeals of the State of Oklahoma.

### Opinions Below

The opinion of the Municipal Criminal Court of Record of the City of Oklahoma City, Oklahoma, refusing a case-made, or written record, *forma pauperis,* entered on the Sixth day of December, 1967, is not officially reported but is a part of the record certified to this Court (A. 4).

The opinion of the Court of Criminal Appeals of the State of Oklahoma, entered on the Third day of April, 1968, appears at 39 Okla. Bar Assn. Jour. 588. It is officially reported as *Williams* v. *Oklahoma City,* Okl.Cr., 439 P.2d 965 (1968), and is a part of the record certified to this Court (A. 10-11).

## Jurisdiction

The judgment of the Court of Criminal Appeals of the State of Oklahoma was entered April 3, 1968, and is a final judgment since rehearings to that court are not permitted in original actions. Petition for Writ of Certiorari was filed herein on April 29, 1968. Jurisdiction is conferred by U. S. Const., Fourteenth Amendment, Sec. 1 and 28 U.S.C. 1257(3).

## Constitutional Provisions and Statutes Involved

The ordinances of the City of Oklahoma City, Oklahoma providing for the operation of the Oklahoma City Municipal Criminal Court, the Statutes of the State of Oklahoma providing for the right to appeal a criminal conviction, by casemade, and the State and Federal Constitutional Provisions of Due Process and Equal Protection are involved and are set forth in Appendix A, *infra,* page 31.

## Question Presented

May a state extend to its affluent citizens the absolute right to appeal by casemade their convictions of a misdemeanor in a Municipal Criminal Court of Record, but withdraw said right from an indigent person wholly because of his poverty?

## Summary Statement of Case

Petitioner, hereafter referred to as Defendant, was convicted after jury trial (R. 24-26) in the Municipal Criminal Court hereafter referred to as Respondent Court, which is a Court of Record of the City of Oklahoma City, hereafter referred to as Respondent City, with the crime of driving while under the influence of intoxicating liquor, and his penalty was set at ninety days incarceration together with a fine of fifty dollars (A. 1-2). He subsequently filed his Notice of Intention to Appeal and Request for Casemade at Public Expense (A. 2). At the hearing on his request for casemade *forma pauperis,* the evidence revealed that Defendant was a colored male (Respondent's Brief in Opposition to Certiorari, 4), with a wife and 11 children who depended upon him for their entire support (A. 3). Defendant was a hospital janitor earning about fifty-five dollars ($55.00) per month. (Page 7 of Appendix to Respondent's Brief in Opposition to Certiorari.) The trial court made several crucial findings of fact (A. 4-5): (a) Petitioner's appeal is not wholly without merit (b) Petitioner's appeal cannot be properly presented by a mere transcript of record, but must be presented by at least a partial casemade (c) Petitioner's application for casemade *forma pauperis* is in proper form and is timely filed (d) Petitioner qualifies as an indigent person and (e) neither Petitioner nor his attorney could make up a record of the testimony and proceedings from memory.

The decision of the trial court was expressly based upon a lack of statutory authority upon which to grant relief (A. 5).

Petitioner then petitioned the highest state appellate court, the Court of Criminal Appeals, for a writ of mandamus to require the prosecuting entities, Respondents herein, to furnish a casemade *forma pauperis*. The appellate court assumed original jurisdiction and rendered its decision denying relief. The denial was based upon a lack of statute or ordinance authority and upon the alleged absence of a single instance where by dicta or otherwise the Supreme Court of the United States had intimated that an indigent person, convicted for a violation of a city ordinance, is entitled to a casemade or transcript at city expense in order to appeal from his conviction (A. 10-11).

## Summary of Argument

The State of Oklahoma grants the absolute right to affluent persons to appeal their convictions in Respondent Court directly to the highest appellate court in Oklahoma, the Court of Criminal Appeals. The manner in which the appeal is taken is similarly open to all persons, there being an abbreviated and an extended form of appeal.

However, Respondents have wrongfully withdrawn the right of appeal from Defendant by requiring him to pay for the costs of appeal in advance. This discrimination is on the sole basis of poverty and is prohibited by the Due Process and Equal Protection Clauses of the United States and Oklahoma Constitutions, by *Griffin* v. *People of the State of Illinois,* 351 U.S. 12, by *Duncan* v. *State of Louisiana,* 36 U.S.L.W. 4414 and by other cases construing the rights of indigents to an adequate appellate review.

The discrimination is admittedly on the sole basis of poverty because the trial court made findings of law and

fact that Defendant was an indigent, that his legal procedure was correct, that his legal need was for the long form of appellate review, that his appeal was not without merit and that an adequate appellate record could not be reconstructed from notes or memory (A. 4-5). Both the trial court and state appellate courts based their holdings upon a supposed absence of statutory, ordinance or constitutional authority,[1] which only amounts to a violation of constitutional prohibitions via inactivity, instead of activity. Therefore, Defendant's poverty has barred him from his rightful appeal.

The contention that the Equal Protection and Due Process Clauses do not apply to misdemeanors is not corroborated by any constitutional language nor by the language in the leading opinions of this Court such as the *Griffin* or *Gideon* cases. Even if a "petty-serious" offense distinction has stumbled into existence, the offense of driving while intoxicated is one of a serious nature, nationwide and in Oklahoma. Oklahoma has defined any penalty which includes any incarceration as a significant penalty. Therefore the traditional elements of a "serious offense"—an offense of serious nature and a resulting significant penalty —are present in the instant case.

The judicial administration of justice will not be impaired but rather can be expected to improve from a more lawful, rational, systematic disposition of "small" criminal cases.

There is no category of "quasi-crimes" which can be relevant in this case. There are no other meaningful distinctions which would bar relief.

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[1] Authorities were amply furnished. See R. 29-37 for brief presented to state appellate court. Brief presented to trial court is attached to Petition for Writ of Certiorari, pp. 28-32.

## ARGUMENT

### I.

### A State May Not Make Any Invidious Discriminations Which Preclude an Adequate Appellate Review of a Criminal Conviction.

A. Petitioner's Right of Appeal in Oklahoma Is Absolute.

It is well established in Oklahoma that persons convicted of a crime have been extended an appeal of their conviction as a matter of right. Art. VII Okla. Const. Sec. 15 *infra*, p. 33. Title 22 O.S. 1051 (1961), *infra*, p. 38, provides:

> "An appeal to the Court of Criminal Appeals may be taken by the defendant, as a matter of right from any judgment against him; and upon the appeal, any decision of the court, or intermediate order made in the progress of the case may be reviewed."

The Oklahoma legislature has enacted a specific statute which gives defendant in Respondent Court the absolute right to appeal to the Court of Criminal Appeals " . . . in the same manner and to the same extent . . . " that appeals are taken from a conviction of a felony in district court to the Appellate Court. 11 O.S. 765 (1961) *infra*, p. 33 and 20 O.S. 274 (1961) *infra*, p. 36.

In Oklahoma, as in many other states—including Illinois—there are two methods of perfecting an appeal. The first is by a transcript of record. 22 O.S. 1059, 1060 (1961) *infra*, p. 39. A transcript of record includes only the basic plead-

ings and orders filed in the case, 22 O.S. 977 (1961) *infra*, p. 38, and this manner of appeal cannot be used to present questions regarding a trial court's ruling on admissibility of evidence, motions to suppress or inadequacy of instructions. *Smith* v. *State*, 54 Okl.Cr. 348, 21 P.2d 51 (1933); *Ward* v. *State*, 56 Okl.Cr. 316, 38 P.2d 582 (1934). The second manner of appeal is by what is termed a "case made" (or casemade) 22 O.S. 1059 (1961) *infra*, p. 39. A casemade is a written record, prepared by the court reporter, of all proceedings, written or oral, which have taken place in the trial court. The term "transcript" will hereafter be used to denote the short form of appeal and "casemade" will denote the longer form.

The above statutes do not patently reflect the generally recognized practice in Oklahoma that appellants are charged by the court reporter for the preparation of a casemade but this point has been conceded by the trial court (Appendix A to Respondent's Brief in Opposition to Certiorari, P. 5). The state appellate court acknowledged the right of an indigent felon to appeal by casemade *forma pauperis* (A. 10).

Therefore, it can be seen that an affluent citizen in Oklahoma convicted of a misdemeanor in Respondent Court has an absolute right to appeal his conviction, by casemade, to the Court of Criminal Appeals of the State of Oklahoma.

### B. It Is Fundamentally Unfair to Discriminate in Appeals Solely on Account of Poverty.

It may be well to begin a discussion of prohibited discrimination in appeals at the relative end—or at least at the most recent resting place—which is *Griffin* v. *People of Illinois*, 351 U.S. 12. The material facts of *Griffin* were

identical to those of the instant case except that *Griffin* involved the appeal of a felony whereas defendant is appealing from a misdemeanor.

In Illinois, as in Oklahoma, there was both an abbreviated manner of appeal (there called the mandatory record) and a complete form of appeal (there denoted a transcript, which is the Oklahoma casemade). In Illinois, the long form was uncontestably given free only to indigent appellants convicted of capital offenses. It is given to indigent felons in Oklahoma. In *Griffin,* it was generally conceded that the complete appeal procedure was needed, although there was some feeling in this Court that the case should have been remanded for a more complete determination of need. In the instant case, the trial court found the legal need to exist:

> "The questions raised by defendant's appeal cannot be presented to the proper appellate court by an appeal by Transcript of Record, but must be presented by the preparation of at least a partial casemade herein" (A. 4).

The trial court herein also found that defendant's attempted appeal was not without merit (A. 4-5) and defendant is here, as he was in *Griffin,* clearly an indigent (A. 4-5). In *Griffin,* the Court established that the 14th Amendment guaranties of Equal Protection and probably[2] Due Process call for procedures in criminal trials which allow no invidious discriminations between persons and different

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[2] See discussion pages 11-12, *infra,* and Wilcox, Bertram F. and Bloustein, Edward J., *The Griffin Case—Poverty and The Fourteenth Amendment,* 43 Cornell L.Q. 1, 11-12 (1957); Note: *Adequate Appellate Review for Indigents: A Judicial Blend of Adequate Transcript and Effective Counsel,* 52 Iowa L.R. 902 (1967).

groups of persons. The discrimination imposed against defendant in this case, which has deprived him of his statutory right to appeal solely because of his poverty, is squarely within the holding of the *Griffin* case.

One subsidiary issue discussed and determined again in *Griffin* was that the constitutional guaranties apply to the appeal stage as well as during the initial trial of a case. It was pointed out that all of the states now provide some method of appeal from criminal convictions, which indicates that appellate review is widely thought to be important to a correct adjudication of guilt or innocence. Therefore the appellate function must be granted so as to provide an adequate, as well as equal, review. In *Draper* v. *State of Washington,* 372 U.S. 487, this Court pointed out that the record must be one of sufficient completeness to permit proper consideration of defendant's claims. In the instant case, the only sufficient method of appeal is by casemade since the errors complained of, which raised issues thought by the trial court to be of some merit (A. 4-5) can, in Oklahoma, only be presented by appeal by casemade, or at least a partial one (A. 4-5). *Ward* v. *State*, 56 Okl. Cr. 316, 38 P.2d 582 (1934) *supra.* The inequality produced by defendant's being barred from presenting testimony to an appellate court is emphasized in the instant case by the fact that Respondents have ordered, paid for (presumably) and attached to their Brief in Opposition to Certiorari, a complete written record of the testimony and arguments in the trial court upon defendant's request for a casemade *forma pauperis.* In sum, affluent respondents can obtain for their purposes the very incidents of appeal that have been continuously denied defendant in the trial court and in the state appellate court. This inequality is

prohibited by *Griffin, supra; Draper, supra; Eskridge* v. *Washington State Board,* 357 U.S. 214; *Long* v. *District Court of Iowa,* 385 U.S. 192 and *Roberts* v. *LaVallee,* 389 U.S. 40.

Just as *Griffin* applies to appeals as well as to trials, it is equally clear that an adequate appellate review cannot be provided without the service of counsel as well as a sufficient casemade. In the instant case, defendant, although he is a pauper, does have counsel and therefore the right to counsel is not directly at issue, although it is indirectly before the Court since the right to a casemade would be useless without counsel to aid in its presentation. The two elements are mutually dependent. In *Douglas* v. *People of the State of California,* 372 U.S. 353, 355, the court pointed out that in *Griffin* the issue was deprivation of right to a transcript, which was the same evil as the deprivation of right to counsel on the basis of poverty. Again in *Anders* v. *California,* 386 U.S. 738, this Court held that those procedures are invalid, wherein a rich man, who appeals as of right, enjoys benefit of counsel's examination into record, research of law, and marshalling of arguments on his behalf, while the indigent is forced to shift for himself. The trial court in the instant case found that defendant was not able to make up an adequate written record from memory (A. 5). Even if he could have done so, the need for counsel is pointed out in the language of *Powell* v. *State of Alabama,* 287 U.S. 45, 68-69 which brought out that the defendant in that case was incapable of following the rules of evidence, requiring a proper charge and presenting his defense. There is nothing to indicate that the present case is distinguishable. The charge against defendant is that of unlawfully and wrong-

fully operating a motor vehicle over and upon a (named) street while under the influence of intoxicating liquor contrary to the form of the ordinances in such cases made and provided and against the peace and dignity of the City of Oklahoma City (R. 11). Although no testimony nor findings were made below as to the intelligence or education of the defendant in this case, it would be unusual to encounter a hospital janitor with the education to adequately defend against such a charge, to handle the admission of evidence on the issue of "under the influence" or to submit proper instructions for the jury which would adequately cover his defense. The test of the ability of the accused to fend for himself, suggested in *Arbo* v. *Hegstrom* (D.C. Conn.), 261 F.Supp. 397 (1966) which held that the failure to advise defendant of his right to counsel was a denial of the Due Process clause, is rarely met by the average citizen charged with crime in today's courts of record.

It may be argued that since defendant has his own counsel, i.e. that counsel was not court-appointed, defendant should likewise have to secure his own casemade. But even in the formerly unique situation of an indigent misdemeanant having appellate counsel, the right to a *forma pauperis* casemade—" . . . a record of sufficient completeness . . . "—is one of the vital incidents of adequate appellate review, without which, the most able counsel in the instant case could not be effective. *Draper* v. *State of Washington,* 372 U.S. 487, *supra.*

That the rights to appellate counsel and sufficient written record are provided by the Due Process as well as the Equal Protection clauses of the 14th Amendment to the United States Constitution was probably decided in *Griffin* v. *People of the State of Illinois,* 351 U.S. 12. The four

justices of the initial opinion specifically mentioned both clauses. In addition, the concurring opinion stated at 351 U.S. 12, 22, that the fact a state may deny the right of appeal altogether does not authorize differentiations that have no relation to a rational policy of criminal appeal, nor does it authorize the imposition of conditions " . . . that offend the deepest presuppositions of our society . . . " This is surely the language of Due Process rolled together with that of Equal Protection.[3] Not long before the decision in *Griffin*, the Court held in *Bolling* v. *Sharpe*, 347 U.S. 497, 499, that the concepts of Equal Protection and Due Process, both stemming from our American ideal of fairness, are not mutually exclusive and as this Court has recognized, discrimination may be so unjustifiable as to be violative of Due Process. See also *Uveges* v. *Commonwealth of Pennsylvania*, 335 U.S. 437. Since *Griffin*, more than a few authorities have construed the rights clarified in that opinion as being based upon both Due Process and Equal Protection. *Doyle* v. *United States* (C.A. 9th), 366 F.2d 394, 398-399 (1966); *Gideon* v. *Wainwright*, 372 U.S. 335, 341; *Kelly* v. *State of North Carolina* (E.D. N. Car.), 276 F. Supp. 200 (1967); *Pate* v. *Holman* (C.A. 5th), 341 F.2d 764, 770 (1965); *Petition of Thomas* (W.D. La.), 261 F. Supp. 263, 264 (1966); *State* v. *Cowart* (Sup. Ct. S. Car.), 162 S.E.2d 535, 537 and *Wright* v. *Bailey* (D.C. N. Car.), 228 F. Supp. 560 (1964).

### C. The Crime Charged Is a Serious Offense in Oklahoma.

Respondents have heretofore successfully contended that a casemade *forma pauperis* need not be furnished in this

[3] Wilcox & Bloustein, *supra*, n. 2.

case for the reasons that defendant was only convicted of a "petty offense"; that he was convicted of a misdemeanor instead of a felony; that he was convicted of an ordinance violation instead of a state statute violation or that he was convicted in municipal court[4] instead of state court. Apparently the latter three arguments are merely restatements of the petty offense contention. At any rate, it is defendant's position that none of these alleged exceptions apply in Oklahoma.

The "serious offense" limitation is that persons charged with crimes, which are not serious offenses, do not have the right to counsel guaranteed by the Sixth Amendment to the United States Constitution, as applied by this Court in *Gideon* v. *Wainwright,* 372 U.S. 335. There is no constitutional language to support such a limitation and it is submitted that the practical explanation for this misconception is that due to the lack of counsel willing and available to appeal a misdemeanor to an appellate court of stature, most of the cases that were appealed were felonies, or serious offenses. Since the courts were properly careful not to decide an issue not before them, the right to counsel in misdemeanor cases was not effectively negated. Instead, the serious-petty offense distinction is one of inclusion and not exclusion. This court and lower courts have critically discussed this comparison in *Arbo* v. *Hegstrom* (D.C. Conn.), 261 F. Supp. 397, 400-401 (1966); *Cheff* v. *Schnackenberg,* 384 U.S. 373, 386-387; *Evans* v. *Rives,* 75 U.S. App. D.C. 242, 126 F.2d 633 (1942); *Gideon* v. *Wainwright,* 372 U.S. 335; *Harvey* v. *State of Mississippi*

[4] In *Montgomery* v. *Warden,* 1 Md. A. 30, 226 A.2d 687 (1967) the offense was held to be a serious offense even though prosecuted in municipal court.

(C.A. 5th), 340 F.2d 263, 269 (1965); and *McDonald* v. *Moore* (C.A. 5th), 353 F.2d 106, 110 (1965).

If the "serious-petty" offense distinction has some remaining vitality, it is clear that the offense of driving while intoxicated is in Oklahoma a serious offense.[5] How to classify an offense as serious or petty is to be determined by objective criteria, chiefly existing laws and practices in the nation. *Duncan* v. *State of Louisiana,* 36 U.S. L.W. 4414, 88 S.Ct 1444.

One of the first indicia of the seriousness the citizens of a locality import to a specific offense is whether the right to a jury trial is extended to it. For example, in *Natal* v. *State of Louisiana,* 139 U.S. 621 the defendant was convicted of operating a private market within six blocks of a public market, which carried a maximum sentence of a $25.00 fine or 30 days imprisonment if the fine was not paid. The court held that the violation of this regulatory provision, which was within the police power of the local municipality, was a petty offense which could be tried without a jury. A similar case was *Schick* v. *United States,* 195 U.S. 65, in which the defendant was fined $50.00 for purchasing oleomargarine not stamped according to law. The court relied on the points that the penalty was a fine only and the offense was not one necessarily involving moral delinquency, but was one which could have been the result of ignorance or thoughtlessness. It was held to be a petty offense. Twenty-six years later in *District of Columbia* v. *Colts,* 282 U.S. 63, this Court had occasion to classify an offense which is not as severe as the one in the

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[5] Okla. City, Okla. Rev. Ord. (1960) tit. 21, ch. 6, secs. 27.1, 27.2 (Supp. 1966) *infra,* p. 42.

instant case. In the *Colts* case, defendant was convicted of reckless driving. The maximum penalty for the first offense was $100.00 fine and 30 days in jail. He was given a jail sentence of 30 days.[6] The Court held that the offense was not merely *malum prohibitum* but was *malum in se.* It was an indictable offense at common law which, if resulting in death, would have subjected the driver to a felonious homicide charge.[7] The opinion stated, at 282 U.S. 63, 73:

> "An automobile is, potentially a dangerous instrumentality . . . . To drive such an instrumentality through the public streets of a city so recklessly . . . is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense."[8]

A few years later this Court in *District of Columbia* v. *Clawans,* 300 U.S. 617 (1937) held that the penalty of $300.00 fine and 90 days imprisonment was not, in light of the times, so severe as to raise the offense of conducting a secondhand business without a license to the level of a serious offense requiring jury trial. The Court was careful to note however, at 300 U.S. 617, 627, that " . . . a penalty once thought to be mild may come to be regarded as so harsh as to call for the jury trial . . . "

So firstly the determination of whether an offense is "petty" requires an analysis of the nature of the offense itself as well as the severity of the penalty; even though

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[6] *Colts* v. *District of Columbia* (Ct. App. D.C.), 38 F.2d 535, 536 (1930).

[7] See 21 O.S. 711 (1961) *infra,* p. 37, creating the identical result in Oklahoma.

[8] See also *State* v. *Hoben,* 26 Minn. 436, 98 N.W.2d 813 (1959).

short sentences are fixed for a particular offense a jury trial will be constitutionally required if the offense is of serious character. Secondly, to the extent that the penalty is relevant in this process of characterization, it is the maximum potential sentence, not the one actually imposed, which must be considered. It was so held in the recent case of *Duncan* v. *State of Louisiana,* 36 U.S.L.W. 4414, 88 S.Ct. 1444, in which the defendant was sentenced to 60 days in jail and a fine of $150.00. The maximum sentence possible was two years and $300.00. This Court held that in the absence of explicit constitutional provision, and where the legislature has not otherwise addressed itself to the problem, the definitional task of drawing the line between serious and petty offenses must be determined by the courts according to objective criteria consisting primarily of the law of the locality taken as a gauge of its social and ethical judgments of the crime in question.

Turning to the law of the locality, the Oklahoma legislature has profusely reflected the values of its citizens with considerable legislative activity. From the birth of the state until this year, 1969, the right to trial in criminal cases by a jury of twelve men has remained inviolate. Okla. Const. Art. II Sec. 19 *infra,* p. 31. In 1968, the people, by a statewide vote elected to retain juries for all crimes down to and including offenses for the violation of a city ordinance where the resulting penalty is over $100.00. If imprisonment may be meted out, the offense is a crime. Art. II Okla. Const., Sec. 19 (1968) *infra,* p. 32. The legislature has spoken in Oklahoma to define a crime as any offense which carries a penalty of fine or imprisonment. 21 O.S. 3 (1961) *infra,* p. 37. Lest there remain any confusion about the difference or similarity in the meanings

of "imprisonment" and "incarceration" in Oklahoma, the court held in *Ex Parte Cain,* 20 Okl. 125, 93 P. 974 (1908) that the word "imprisonment" means imprisonment in the county jail or local prison unless expressed to be in the penitentiary. No such expression appears in the statutes relevant to this case. The Oklahoma courts have in 1921 further settled the issue of whether an ordinance violation was a crime. Construing the constitutional and statutory expressions of public will, the court in *Ex Parte Johnson,* 20 Okl.Cr. 66, 201 P. 533 (1921), which involved the crime of operating a movie on Sunday for which the maximum penalty was $50.00 and costs,[9] discussed previous Oklahoma decisions and held that any action, where an accused will or might be subjected to imprisonment on any charge amounting to more than a petit offense, is a criminal action. The Court examined legislative history and held that the statutory declaration, " . . . where the offense may be punishable by imprisonment the defendant shall be entitled to a trial by jury" indicates that such action is criminal in nature. 201 P. 533, 537. The Court further held that "The Federal Constitution, the statutes of this state and decisions of this court have fixed this dividing line (between petit offenses and graver offenses of a criminal character) at a penalty of $20.00, including costs . . . " 201 P. 533, 537. In the earlier case of *Ex Parte Johnson,* 13 Okl. Cr. 30, 161 P. 1097 (1917) the court held that a violation of vagrancy against the Oklahoma City ordinances, carrying a $99.00 fine and 90 days in the county jail, was a crime entitling defendant to a jury trial.[10] The court, quoting

[9] Defendant was jailed for failure to pay the fine.

[10] Citing, *inter alia,* U.S. Const. 6th Amend. *infra,* p. 31 and Art. II Okla. Const. Sec. 7, *infra,* p. 31.

from *Callan* v. *Wilson,* 127 U.S. 540, stated at 161 P. 1097, 1100:

> "It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a 'crime' within the meaning of the third article, or a 'criminal prosecution' within the meaning of the Sixth Amendment . . . ."

The Court of Criminal Appeals has recently had occasion, in cases similar to this case, to affirm the right to a jury trial in Respondent Court. *Evans* v. *Lambert,* Okl. Cr., 418 P.2d 217 (1966); *Jones* v. *Lambert,* Okl.Cr. 418 P.2d 219 (1966) and *Campbell* v. *Oklahoma City,* Okl.Cr. 425 P.2d 1000 (1967). Moreover, at the time of the *Evans* opinion, the maximum penalty, given by the same court for the same offense as in the instant case, was a fine of twenty dollars ($20.00). Now, the maximum fine for this offense in Respondent Court is ninety (90) days incarceration and a fine of one hundred dollars.[11] Therefore the "seriousness of the offense" is underlined by the fact that even in the absence of an extreme penalty, the character of the offense was thought to be so serious as to require a jury trial.

From the above stated indications of public will in Oklahoma as evidenced by legislative and judicial action over a period of sixty years, it is clear that at the time of the trial of this case, Oklahoma had chosen to draw the line above petty offenses at penalties of $20.00 fines.[12] The new constitutional amendments, initiated and passed since de-

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[11] But defendant can be jailed for failure to pay fine. Okla. City, Okla., Rev. Ord. (1960) tit. 8, ch. 1, sec. .15 *infra,* p. 41.

[12] The amount under the new constitutional amendment is $100.00. Art. II Okla. Const. Sec. 19 (1968) *infra,* p. 32.

fendant instituted his appeal, do not show any change in public attitude which would affect the result in this case since the imposition of any imprisonment still moves the offense into the category of crimes which carry the right to a jury trial. Art. II Okla. Const. Sec. 19 (1968) *infra*, p. 32.[13] Therefore both elements—a significant penalty for an offense of serious nature—have always been present in Oklahoma in regards to the crime of driving under the influence as charged against defendant in Respondent Court. No reason has been suggested in support of this or any other Federal court removing from the people of Oklahoma the right to draw the line between serious and petty offenses according to their aggregate social and ethical judgments.

There are other laws of the locality which can aid in a classification of serious offenses. Just as in *District of Columbia* v. *Colts*, 282 U.S. 63, *supra*, the ordinance violation appealed from herein is also a felony if the accused happens to be arrested by state officials or if the prosecuting entity chooses to accuse a person of the identical violation of state statute instead of a violation of municipal ordinance. 47 O.S. Sec. 11-902 (Laws 1961) *infra*, p. 40. The Oklahoma court in *Ex Parte Johnson*, 20 Okla.Cr. 66, 201 P. 533, 537 (1921) expressly removed the existence of a similar state statute as a basis of their definition of the term "crime". It is conceded in the opinion below (A. 10) that an indigent accused of this same offense in State Court has an absolute right to counsel and to a free transcript. The seriousness of the offense is therefore reflected in the fact that counsel and transcript are provided automatically if the penalty increases. The "character or seriousness" of

[13] See 22 O.S. 16 (1961) *infra*, p. 38.

the offense is exactly the same in both cases and obviously becomes no more difficult to defend against merely because the penalty is increased.

Other legislative indications of community values are available. In *District of Columbia* v. *Colts,* 282 U.S. 63, 73, *supra,* it was noted that if the offense had caused the death of another person, it would result in " . . . some class of felonious homicide . . . " . The same result occurs in Oklahoma under 21 O.S. 711, and 715 (1961) *infra,* p. 37. The legislature and Respondent City have also provided Respondent Court with a full time court reporter and the court operates under all laws applying to courts of record. 11 O.S. 781[14] (Laws 1965) *infra,* p. 34 and 11 O.S. 798 (1961), *infra,* p. 35. The right to counsel is inviolate, Okla. Const. Art. II Sec. 20 *infra,* 33, and there is arguably statutory authority for the right to counsel and transcript *forma pauperis* in a reading together of 11 O.S. 792 (1961) *infra,* p. 34; 11 O.S. 798 (1961) *infra,* p. 35; 20 O.S. 110, and 111[15] (1961) *infra,* p. 35; 20 O.S. 276 (1961) *infra,*[16] p. 36, which in effect provide that the criminal procedure, as well as the fees for court reporters, are the same in Respondent Court as they are in district court. Even if Respondents should prevail in their contention that the above five statutes apply to district court and not to actions

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[14] 11 O.S. 782 (1961) *infra,* p. 34, was at the time of judgment below, authority for Respondent Court's jurisdiction to prosecute violations of state statutes. It was amended in 1968, since the institution of defendant's appeal, to limit the court's jurisdiction to violations of city ordinances.

[15] 20 O.S. 110 and 111 (1961) *infra,* p. 35, were repealed in 1968 since the institution of defendant's appeal and have been substantially re-enacted in 20 O.S. 106.3(b) (Laws 1968).

[16] 20 O.S. 276 (1961) *infra,* p. 36, was repealed in 1968 since the institution of defendant's appeal, and has been re-enacted in substance in 20 O.S. 91.1 (Laws 1968).

in Respondent Court, it is by no means to say that the failure of Respondent City to enact ordinances for the provision of attorneys and casemades *forma pauperis* removes from it the responsibility of doing so. A deprivation of Due Process and Equal Protection can be by failure to act, as well as by actions.

In evaluating whether the Oklahoma dividing line is a reasonable one, it would not be inappropriate to consider the extralegal consequences of a wrongful conviction, such as the loss of a driver's license,[17] and a job, and higher insurance premiums.[18] In this connection, it is submitted that the relative weight of any specific punishment unavoidably falls unequally upon the shoulders of different persons. For example, a $50.00 fine wrongfully meted out to a bank president, would not be as serious a consequence to him as the same fine, wrongfully meted out, would be to a person earning $55.00 a week. The proposition can be viewed from the other way around: If poor persons and affluent persons are to be judged alike, then, in deciding whether a penalty is severe or not, one might begin with the yardstick applicable to the affluent person. Would a school teacher for example, wrongfully incarcerated for 90 days, suffer serious consequences? Would a stockbroker, wrongfully removed from the day-to-day trading of the market, suffer serious consequences from a 90 day incarceration? Then the comparison could move to a consideration of whether a hospital janitor, who is fined almost one week's

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[17] See 47 O.S. 6-205 (1961) *infra*, p. 39, for the Oklahoma mandatory revocation statute. See also *State* v. *Moseng*, 254 Minn. 263, 95 N.W.2d 6 (1959).

[18] Kamisar, Yale and Choper, Jesse H., *The Right to Counsel in Minnesota: Some Field Findings and Legal Policy Observations*, 48 Minn. L.R. 1, 68-70 (1963).

pay and who is wrongfully removed from providing the support for his wife and family for three months, would suffer serious consequences. It is not extravagant to speculate that such a deprivation might well cause the loss of his wife, job and family. Of course this is not to say that it is the government's function to provide a person with a wife, job and family, but it is an essential function of the state to make the best provision possible for justice, in order that it does not wrongfully cause the loss of one's job, wife or family. Somehow, the public in general has in the past seemed to turn a sharper eye to signs of injustice committed in serious cases than it does to questionable misdemeanor convictions. However to the individual of our society who has just been wrongfully deprived of his liberty, there is no such thing as a small wrong. See *Harvey* v. *Mississippi* (C.A. 5th), 340 F2d 263, 269. This court long ago stated in *Glasser* v. *U. S.*, 315 U.S. 60, at page 76:

> "The right to have the assistance of counsel is too fundamental and absolute to allow courts to *indulge in nice calculations as to the amount of prejudice* arising from its denial." (Emphasis added.)

A misapplication of the petty offense distinction appears in *People* v. *Du Pree,* Ill.App., 240 N.E.2d 414 (1968) in which defendant was convicted in municipal court and sentenced to two years, partly suspended, at the Illinois State Farm. The court held that the trial court had no duty to advise defendant of his right to counsel since the state farm was not a penitentiary.[19] The state had argued

[19] Cf. *People* v. *Long,* Ill. App., 221 N.E.2d 507 (1966) which held that defendant sentenced to six months at the Illinois State Farm had a right to counsel.

that there was no right to counsel in misdemeanor cases. An earlier Illinois case arrived at the same result in spite of a one year confinement in the Illinois State Reformatory. *People* v. *Howard,* 41 Ill.App.2d 128, 190 N.E. 2d 3 (1963). In between the two cases, the court held in *People* v. *Manikas,* Ill.App., 230 N.E.2d 577 (1967) that a defendant convicted of speeding and no state driver's license and sentenced to 60 days in the county jail, should have been advised of his right to counsel on the basis of the confinement penalty. For other departures, see *Cheff* v. *Schnackenberg,* 384 U.S. 373;[20] *DeJoseph* v. *Connecticut,* 3 Conn. Cir. 624, 222 A.2d 752 (1966); *James* v. *Headley* (S.D. Fla.), 281 F.Supp. 588 (1968); and *Winters* v. *Beck* (E.D. Ark.), 281 F.Supp. 793 (1968).

For other examples of courts applying the right to counsel in either misdemeanor, petty offense or municipal court cases, see *Bolkovac* v. *State,* 229 Ind. 294, 98 N.E.2d 250 (1961); *Harvey* v. *Mississippi* (C.A. 5th), 340 F.2d 263 (1965); *In Re Henderson,* 39 Cal. Rptr. 373, 393 P.2d 685 (1964); *Patterson* v. *State,* 231 Md. 509, 191 A.2d 237 (1963); *Preston* v. *Municipal Court,* 10 Cal. Rptr. 301 (1961); *Rutledge* v. *City of Miami* (S.D. Fla.), 267 F.Supp. 885 (1967); *State* v. *Anderson,* 96 Ariz. 123, 392 P.2d 784 (1964) and *State* v. *Moosbrugger,* Minn., 116 N.W.2d 68 (1962).

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[20] The Court distinguished *Cheff* from the law applicable in criminal actions in that it was an action for contempt and not subject to the right to counsel in criminal cases.

## II.

**The Application of the Griffin Rule to Misdemeanors Will Improve the Administration of Justice.**

There is one objection which Respondents have not yet raised for the simple reason that it is already strongly implied in any discussion of the legal rights of petty offenders: That the extra burden placed upon the city court system will be prohibitive. Although the state of the law on this subject in New York is apparently not settled, one justice in a recent case parried with a sensible answer. In *People* v. *Letterio,* 16 N.Y.2d 307, 266 N.Y.S.2d 368, 213 N.E. 2d 670 (1965), the Court held that in New York, traffic offenses were held to be petty offenses and therefore the trial court had no duty to even advise indigent defendants of their right to counsel.[21] In the Chief Judge's dissenting opinion, he pointed out at 213 N.E.2d 670, 673 that in 1964 and (estimated) 1965, there were about two million traffic prosecutions, but that only 2% of those did not plead guilty. Of that two per cent, he estimated that a small fraction of those would be indigent and that present legal aid attorneys would be able to handle the small additional burden.

If the great metropolis of New York Ctiy could operate under such a plan, surely it would cause but a ripple in the judicial system of Oklahoma City to grant the relief prayed for in this case. In Oklahoma City, for example, the municipal court is divided into two divisions,[22] one the traffic

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[21] Cf. *People* v. *Witenski,* 15 N.Y.2d 392, 259 N.Y.S.2d 413, 207 N.E.2d 358 (1965).

[22] Okla. City, Okla. Rev. Ord. (1960) tit. 8, ch. 1, sec. .02 *infra,* p. 41.

court division and the other the criminal court division. Okla. City Ord. (1960) tit. 8, ch. 1, sec. .01 *infra*, p. 40. The traffic court division conducts non-jury trials of minor traffic offenses carrying a penalty of a fine only, of under twenty dollars, and ordinarily the cases are heard without the aid of an assistant city attorney. The criminal court division has two courtrooms, each presided over by a single judge, and one of which contains the court of record. The other courtroom is used for non-jury trials of minor criminal offenses and usually is operated without court reporter or city attorney. Generally one assistant city attorney is sufficient to handle the trial dockets in the court of record. Although it has been held that a revenue interest is not a sufficiently compelling reason to justify a state's encroachment upon other personal liberties protected Constitutionally, *Duncan* v. *Louisiana*, 36 U.S.L.W. 4414, 4419, 88 S.Ct. 1444, 1453; *Cohen* v. *Brednoeft* (D.C. Tex.), 290 F.Supp. 1001, 1004 (1968), and *People* v. *Bowdoin* (Crim. Ct. New York City), 293 N.Y.S.2d 748, 753 (1968), judicial notice should be taken that the Oklahoma Municipal Court (all three courtrooms) operated in the 1967-1968 fiscal year at a net profit of about one million dollars.[23] Of further interest is the fact that in the court of record alone, 2305 charges were prosecuted in the year of 1968, of which thirty were tried to a jury.[24] Surely the availability of a transcript

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[23] Certified copy of City Clerk of Oklahoma City, Oklahoma, of Statement of Revenue, Expenditures and Expected Needs *infra*, p. 43. Published in part in Daily Law Journal-Record, Oklahoma City, Oklahoma, Sept. 19, 1968, p. 14. Departments sharing some personnel with the municipal courts are not included in the Respondents' budgetary classifications. Examples of such shared personnel are police and assistant city attorneys.

[24] Affidavit of deputy court clerk of Respondent Court, *infra*, p. 45.

*forma pauperis* extended to that fraction of those thirty defendants who sought to appeal their cases, and who were indigent, would not upset the administration of justice in criminal prosecutions. The need for review was noticed by the Court in *Griffin* v. *People of Illinois,* 351 U.S. 12, 18, in the statistics that show that a large number of convictions are reversed upon appeal.

Instead of hampering the administration of justice, the rise in the government's reputation for fairness would probably result in an overall improvement in the administration of justice. Such was the conclusion of the court in *Brinson* v. *State of Florida* (S.D. Fla.), 273 F. Supp. 840, 843-844 (1967) which followed the federal six months rule and reversed a conviction for a misdemeanor under the maximum sentence possible criteria.[25] The problem was pinpointed succinctly by the writers of the recent President's Riot Commission Report[26] at page 183:

> "Some of our courts, moreover, have lost the confidence of the poor . . . The belief is pervasive among ghetto residents that lower courts in our urban communities dispense 'assembly-line' justice; that from arrest to sentencing, the poor and uneducated are

[25] The defendant was sentenced to 70 days plus another 100 more days for failure to pay fines. The possible maximum sentence was over six months.

[26] The President's National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (U.S. Government Printing Office, Washington, D.C. 1968). See also The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society, A Report* 150 (U.S. Government Printing Office, Washington, D.C. 1967) and Task Force on Administration of Justice, *Task Force Report: The Courts,* 29 (U.S. Government Printing Office, Washington, D.C. 1967).

denied equal justice with the affluent, that procedures such as bail and fines have been perverted to perpetuate class inequities. We have found that the apparatus of justice in some areas has itself become a focus for distrust and hostility. Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders."

## III.

**The Serious Offense Charged Against Defendant Is Not Merely a Quasi-Crime.**

It has been contended below that a violation of a city ordinance is only "quasi-criminal in nature". It is true there are dicta to that effect in the case of *Key* v. *City of Ardmore,* 30 Okl.Cr. 8, 234 P.2d 793 (1925). This was a case wherein the procedure of appeal was in dispute. Plaintiff contended that the case was a civil action and that defendant had followed the wrong appellate procedure. Defendant had followed the appellate procedure for criminal cases. The Court said, once, and only once, in its opinion and not in its syllabus, that the ordinance violation was *at least* quasi-criminal. The Court overruled the attack upon the constitutionality of the procedure and upheld the right to appeal. Its language, at Page 794, is as follows:

> "In the early history of the United States Supreme Court, that Court established the principles that Courts will not declare a statute unconstitutional except in clear and urgent cases—cases so clear as to be clear from doubt. 6 R.C.L. 75 and cases cited.
>
> Applying that rule here, the statute authorizing appeals from penal judgments in municipal courts to the

County Court shall be upheld if it can be done by any rational construction. The power delegated by the state to municipalities to enact penal ordinances to aid the state to keep the peace, cannot, under the Constitution and laws now existing, be construed as a part of our system of civil procedure. The violation of a penal ordinance is at least quasi-criminal—usually denominated a misdemeanor. *Ex Parte Bochman,* 20 Okl.Cr. 78, 201 Pac 537; *Ex Parte Johnson,* 13 Okl.Cr. 30, 161 P. 1097 (1917); *Ex Parte Monroe,* 13 Okl.Cr. 62, 162 Pac 233 (1917) and *Franks* v. *City of Muskogee,* 14 Okl.Cr. 391, 171 Pac 492 (1918)."

The *Key* case above, is the only case found to contain any language which might be the basis of a contention that an ordinance violation of the type in the instant case is not a crime. In *Ex Parte Johnson,* 13 Okl.Cr. 30, 161 P. 1097 (1917) defendant was convicted of vagrancy and sentenced to a fine of $99.00 and 90 days in the Oklahoma City jail. The phrase "quasi-crime" was not even mentioned in the opinion which reversed the conviction for lack of a jury trial in criminal prosecutions. The court in *In Re Monroe,* 13 Okl.Cr. 62, 162 P. 233 (1917) convicted defendant of illegally transporting intoxicating liquor and sentenced defendant to a fine of $99.00 and 90 days in jail. The conviction was reversed on appeal as in *Ex Parte Johnson, supra.* In *Franks* v. *City of Muskogee,* 14 Okl.Cr. 391, 171 P. 492 (1918), defendant was convicted in city court and sentenced to a $25.00 fine. He appealed to county court and was convicted and sentenced therein to a $25.00 fine and 45 days in the county jail. There was no mention of quasi-crime. The court reversed the conviction in city court for lack of a jury trial. The last case cited below by

Respondents is that of *Ex Parte Bochman*, 20 Okl.Cr. 78, 201 P. 537 (1921). Defendant therein was convicted of vagrancy in violation of a municipal ordinance. He was sentenced to a $20.00 fine and $6.00 costs, but was imprisoned in the city jail for his inability to pay his fine and costs. The case was reversed and no mention of quasi-crime was made. Therefore it is clear that there is no underlying judicial decision, nor is there any statute or ordinance which has been cited during this litigation to this date which might give rise to the labeling of the offense in the instant case as merely quasi-criminal.

## Conclusion

Wherefore, defendant prays that Respondents be required to grant to defendant a case made *forma pauperis* as would have been extended to indigent felons wishing to appeal their convictions, as well as an enlargement of time in which to appeal said judgment to the Court of Criminal Appeals of the State of Oklahoma as was initially attempted by defendant, or in the alternative, to refrain from further execution of said judgment and to vacate and expunge it from the records.

Respectfully submitted,

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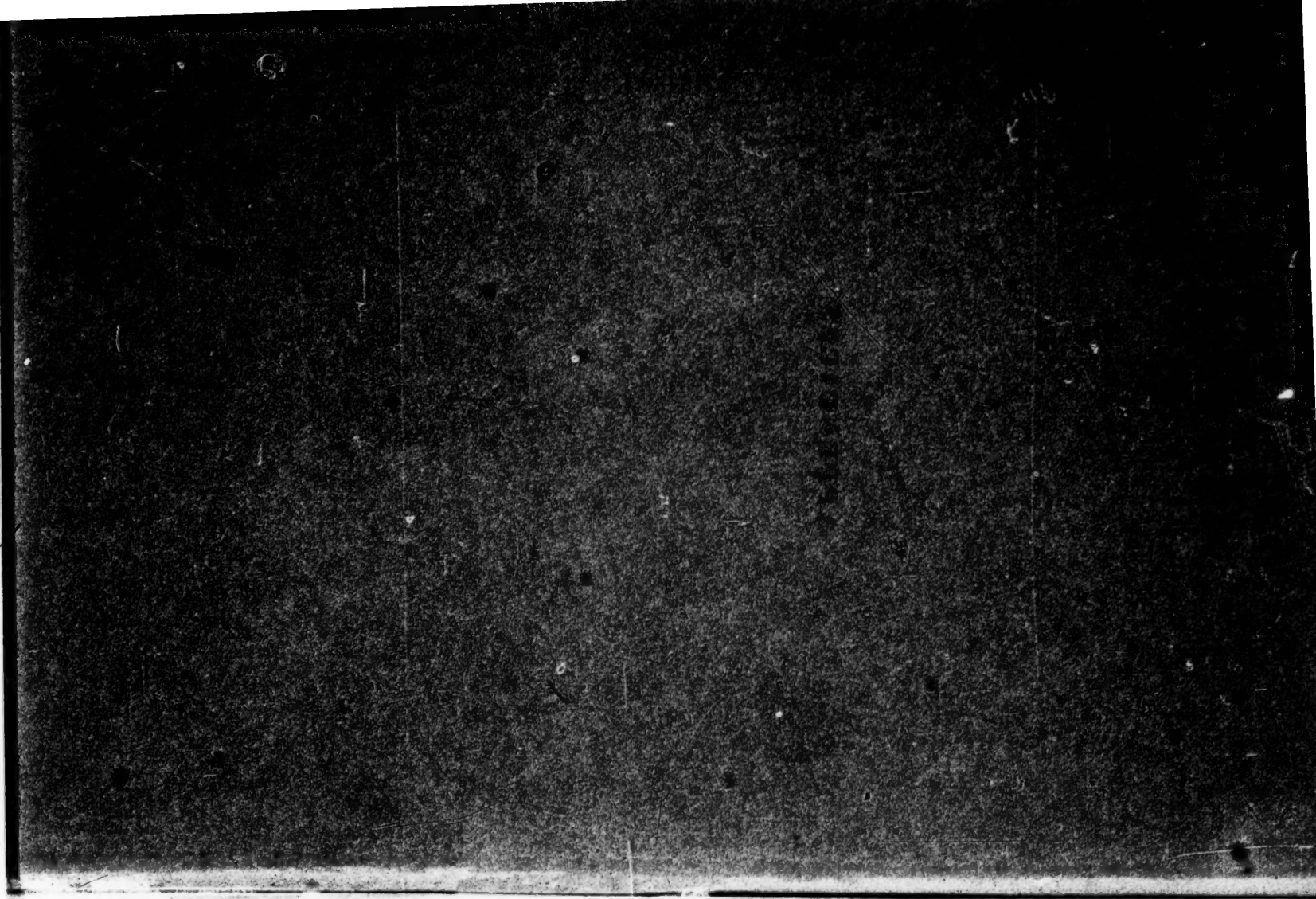
# APPENDICES



## APPENDIX A

CONSTITUTIONAL PROVISIONS

5th Amendment to the United States Constitution

"No person shall be . . . deprived of life, liberty, or property, without due process of law; . . . ."

6th Amendment to the United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . and to have the Assistance of Counsel for his defence."

14th Amendment to the United States Constitution

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Art. II, Okla. Constitution, Sec. 7

DUE PROCESS OF LAW

"No person shall be deprived of life, liberty, or property, without due process of law."

Art. II, Okla. Constitution, Sec. 19 (1907-1952)

TRIAL BY JURY

"The right of trial by jury shall be and remain inviolate, and a jury for the trial of civil and criminal cases in courts of record, other than county courts, shall consist of twelve men; but, in county courts and courts not of record, a jury shall consist of six men.

This section shall not be so construed as to prevent limitations being fixed by law upon the right of appeal from judgments of courts not of record in civil cases concerning causes of action involving less than twenty dollars. In civil cases, and in criminal cases less than felonies, three-fourths of the whole number of jurors concurring shall have power to render a verdict. In all other cases the entire number of jurors must concur to render a verdict. In case a verdict is rendered by less than the whole number of jurors, the verdict shall be in writing and signed by each juror concurring therein."

Art. II, Okla. Constitution, Sec. 19 (Adopted at election in 1968)

TRIAL BY JURY

"The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Hundred Dollars ($100.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Hundred Dollars ($100.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil and criminal cases shall consist of twelve (12) persons; but in the trial of misdemeanors, proceedings for the violation of ordinances or regulations of cities and towns, juvenile proceedings, actions for forcible entry and detainer, or detention only, of real property and collection of rents therefor, and civil cases concerning causes of action involving less than Twenty-five Hundred Dollars ($2,500.00), juries shall consist of six (6) persons. In civil cases, and in criminal cases less than felonies, three-fourths (¾) of the whole number of jurors concurring shall have power to render a verdict. In all other cases the entire number of jurors must con-

cur to render a verdict. In case a verdict is rendered by less than the whole number of jurors, the verdict shall be in writing and signed by each juror concurring therein."

Art. II, Okla. Constitution, Sec. 20

RIGHTS OF ACCUSED IN CRIMINAL CASE

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed. . . . He shall have the right to be heard by himself and counsel . . . "

Art. VII, Okla. Constitution, Sec. 15

APPEALS TO SUPREME COURT FROM COUNTY COURT

"Appeals and proceedings in error shall be taken from the judgments of County Courts direct to the Supreme Court, in all cases appealed from justices of the peace, and in all criminal cases of which the County Court is vested with jurisdiction, and in all civil cases originally brought in the County Court, in the same manner and by like proceedings as appeals are taken to the Supreme Court from the judgments of the District Court."

11 O.S. Sec. 765 (1961)

APPEALS FROM MUNICIPAL CRIMINAL COURTS

"Appeals may be taken from the judgment or order of municipal criminal courts in cities of a population of more than 100,000 according to the last preceding Federal Decennial Census to the Criminal Court of Appeals in the same manner and to the same extent that appeals are now taken from the County Courts to the Criminal Court of Appeals in criminal matters, and no appeals other than those herein provided shall be allowed."

11 O.S. Sec. 781 (laws 1965)

MUNICIPAL CRIMINAL COURTS ESTABLISHED

"In Cities of the State of Oklahoma having a population of more than fifty thousand (50,000) inhabitants as determined by the last preceding Federal Decennial Census, or by the last preceding special Federal Census, there shall be, and is hereby, created and established a Court of Record which shall be known as the 'Municipal Court of the City of .....'. (Naming the city wherein such court is established)."

11 O.S. Sec. 782 (1961)

CRIMINAL JURISDICTION

"From and after the passage of this Act, the Municipal Criminal Courts shall have original jurisdiction to hear and determine all prosecutions, wherein a Violation of any of the ordinances of the City, wherein such a court is established, are charged, *and shall have co-ordinate jurisdiction with the County Court* of the County and Courts of Justices of the Peace of the County in all cases wherein a violation of any Statute of this State is charged, where the offense, or misdemeanor, against the laws of the State shall have been committed within the corporate limits of the City, wherein such a court is established." (Emphasis added)

11 O.S. Sec. 792 (1961)

APPLICATION OF CRIMINAL CODE OF PROCEDURE

"All trials had in the Municipal Criminal Court, except as herein otherwise provided, shall be in accordance with the provisions of the Criminal Code of Procedure, relating to trials of misdemeanor cases in the County Court."

11 O.S. Sec. 798 (1961)

REPORTER

"The Judge of said Court, may, with the consent of the governing body of the City, appoint a suitable and proper person as court reporter, whose duty it shall be to correctly take and record all of the testimony and proceedings had upon the trial of cases when required by either party. The governing body of the City is empowered to fix and determine the compensation to be allowed said reporter including a *salary and fees* for transcribing the testimony and proceedings. In the absence of action by the governing body determining the compensation to be allowed said reporter for transcribing the testimony and proceedings, said reporter *shall receive the same fees* for transcribing the testimony and proceedings that are received by the reporters of the district courts for like services . . . " (Emphasis added)

20 O.S. Sec. 110 (1961)

FEES FOR WRITING TRANSCRIPTS

"In addition to the annual salary now provided by law for each official Court Reporter for the District Court, and for each official court reporter for the Superior Court, each such reporter shall charge and receive One Dollar ($1.00) per page of at least twenty-five (25) lines to the page for writing transcripts; provided that upon request of the party ordering the same, two (2) carbon copies shall be furnished without charge."

20 O.S. Sec. 111 (1961)

TRANSCRIPT IN CRIMINAL CASE—FEE (DISTRICT COURT)

"The Judge may, upon application of either party in a criminal case, direct the official court reporter to

make out and file with the clerk of the court a transcript of his shorthand notes when the same is needed in such case, and he shall receive as compensation therefor One Dollar ($1.00) per page of at least twenty-five (25) lines to the page; provided that, upon request of the party ordering the same, two (2) carbon copies shall be furnished without charge. Provided further, however, that if, before a transcript of the notes is ordered on application of the defendant or his attorney, the defendant shall present to the Judge his affidavit that he intends in good faith to take an appeal in the case and that such transcript is necessary to enable him to prosecute the appeal, and that the defendant has not the means to pay for the same, the court may, at its discretion, order the transcript made at the expense of the county."

20 O.S. Sec. 274 (1961)

CIVIL AND CRIMINAL APPEALS (COUNTY COURTS)

"Appeals and proceedings in error shall be taken from the judgments of county courts direct to the Supreme Court and Criminal Court of Appeals, in all cases appealed from justices of the peace and in all cases appealed from the police judges, and in all criminal cases of which the county court is vested with jurisdiction, and in all civil cases originally brought in the county court, in the same manner and by like proceedings as appeals are taken to the Supreme Court from judgments of the district court."

20 O.S. Sec. 276 (1961)

PLEADING AND PRACTICE

"For the trial of all civil and criminal cases in the county court, the pleadings, practice and procedure, both before and after judgment shall be the same as

that of the district court, except where special statutory proceedings are provided."

21 O.S. Sec. 3 (1961)

CRIME AND PUBLIC OFFENSE DEFINED

"A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit, under this State."

21 O.S. Sec. 711 (1961)

MANSLAUGHTER IN THE FIRST DEGREE DEFINED

"Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor."

• • •

21 O.S. Sec. 715 (1961)

PUNISHMENT FOR MANSLAUGHTER IN THE FIRST DEGREE

"Every person guilty of manslaughter in the first degree is punishable by imprisonment in the penitentiary for not less than four years."

22 O.S. Sec. 16 (1961)

JURY TRIAL—EXCEPTIONS

"No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon final judgment for or against him upon a demurrer to the indictment, or upon a judgment of a police or justice's court in cases in which such judgment may be lawfully given without the intervention of a jury or grand jury."

22 O.S. Sec. 977 (1961)

ENTRY OF JUDGMENT—PAPERS FILED BY THE CLERK —RECORD

"When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1st. The indictment and a copy of the minutes of the plea or demurrer.

2nd. A copy of the minutes of the trial.

3rd. The charges given or refused, and the indorsements, if any, thereon; and,

4th. A copy of the judgment."

22 O.S. Sec. 1051 (1961)

RIGHT OF APPEAL

"An appeal to the Criminal Court of Appeals may be taken by the defendant, as a matter of right from any judgment against him; and upon the appeal, any decision of the court, or intermediate order made in the progress of the case may be reviewed."

22 O.S. Sec. 1059 (1961)

CASE-MADE IN CRIMINAL CASES

"In all criminal cases appealable to the Criminal Court of Appeals, the appellant may prepare, and it shall be the duty of the court to provide for the preparation and settling of a case-made in all respects as in civil cases, and the case-made so settled, served and filed in the trial court may be sent to the appellate court in lieu of all other records of bills of exception; or the proceeding in the appellate court may be as provided in the next section."

22 O.S. Sec. 1060 (1961)

APPEAL BY CASE MADE AND PETITION IN ERROR —NOTICE—TRANSCRIPT IN LIEU OF CASE MADE

"Instead of the appeal hereinbefore provided for, any party desiring to appeal to the Court of Criminal Appeals in any criminal case may proceed by case made and petition in error by filing notice of such intent and by making request for case made, both to be made in writing, in open court, either at the time the judgment is rendered, or within ten days thereafter. In such an appeal the case made must be settled and served and the appeal lodged within the time for such appeal as hereinbefore set out. Instead of the case made plaintiff in error may attach to his petition in error a transcript of the proceedings of record in the trial court."

47 O.S. Sec. 6-205 (1961)

MANDATORY REVOCATION OF LICENSE BY DEPARTMENT

"The Department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction in any court of record of any of the following offenses, when such conviction has become final:

* * *

2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle;"

47 O.S. Sec. 11-902 (Laws 1961)

PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OF DRUGS

"(a) It is unlawful and punishable as provided in paragraph (c) of this section for any person who is under the influence of intoxicating liquor to drive, operate or be in actual physical control of any motor vehicle within the state . . . "

• • •

"(c) Every person who is convicted of a violation of this section shall be deemed guilty of a misdemeanor for the first offense and upon conviction thereof shall be punished by imprisonment in the county jail for a period of time not less than ten days nor more than one year, and a fine of not more than Five Hundred Dollars ($500.00). Any person found guilty of a second or subsequent offense under the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a period of time not less than one year and not to exceed five years, and a fine of not more than One Thousand Dollars ($1,000.00)."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .01

COURT CREATED—TRAFFIC AND CRIMINAL DIVISIONS

"The Municipal Court of the City of Oklahoma City shall consist of two divisions, one to be the Traffic Court Division, and the other the Criminal Court Division, each to be presided over by a Municipal Judge as hereinafter provided."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .02

JURISDICTION OF DIVISIONS

"The position of Municipal Judge, to be known as Judge of the Traffic Court Division, is hereby established. The Traffic Court Division shall have exclusive jurisdiction over the trial of all cases arising out of violations of the Municipal traffic ordinances, or the general ordinances where such offense is connected with a traffic violation. The other Municipal Judge shall be known as Judge of the Criminal Court Division shall have exclusive jurisdiction over the trial of all other cases arising out of violations of the general municipal ordinances other than those pertaining to traffic."

Oklahoma City, Okla. Rev. Ordinances, 1960, Tit. 8 Ch. 1, Sec. .15

PUNISHMENT AND COMMITMENT

"Whenever any person(s) shall have been arraigned before the Court for a violation of any provision of any City ordinance and shall have pleaded guilty to the charge, or whenever any person shall have been found guilty by the Court upon the trial of the case, the Municipal Judge shall declare and assess the punishment prescribed by ordinance and render judgment accordingly, and for costs of suit, which costs shall be not less than $1.00, and that the defendant stand committed until the judgment is complied with. Upon commitment the Defendant so committed shall be credited at the rate of $1.00 per day upon the fine and costs assessed against him except as hereinafter provided."

Oklahoma City, Okla. Rev. Ordinances 1960, tit. 21 Ch. 6, Sec. 27.1 (Supp. 1966)

DRIVING WHILE UNDER THE INFLUENCE

"It shall be unlawful and an offense for any person to drive, operate or be in actual physical control of any motor vehicle upon the streets or roadways within the corporate limits of this city who is under the influence of intoxicating liquor, or who is under the influence of any narcotic drug, barbiturate, amphetamine, marihuana or who is under the influence of any other drug or substance to a degree which renders him incapable of safely driving a motor vehicle . . . "

Oklahoma City, Okla., Rev. Ordinances, 1960, tit. 21 Ch. 6, Sec. 27.2 (Supp. 1966)

PENALTY

"Any person, firm, association, corporation or co-partnership who shall violate any of the provisions hereof shall be deemed guilty of an offense and upon conviction thereof, shall be punished by a fine in any amount not to exceed One Hundred Dollars ($100.00) or imprisonment not to exceed ninety (90) days, or both such fine and imprisonment together with the costs of such proceedings."

## APPENDIX B

CITY OF OKLAHOMA CITY, OKLAHOMA
GENERAL FUND

Statement of Revenue from Sources
Other Than Ad Valorem Taxes
Fiscal Year 1967-1968

• • •

| Fines and Forfeits | Revenue Collected | Estimated Probable Revenue 1968-1969 |
|---|---|---|
| Criminal Court Fines | $ 248,752.25 | $ 223,877.02 |
| Traffic Court Fines | $1,232,586.00 | $1,109,327.40 |
| Court of Record | 72,867.50 | $ 65,580.75 |

• • •

Summary of Expenditures
Fiscal Year 1967-1968

• • •

| | |
|---|---|
| Municipal Courts | $ 217,675.60 |

• • •

Summary of Estimated Needs
Fiscal Year 1968-1969

MUNICIPAL COURTS

| | |
|---|---|
| Personal Services | $ 209,256.00 |
| Maintenance & Operation | 26,745.00 |
| Capital Outlay | 1,210.00 |
| Total | $ 237,211.00 |

STATE OF OKLAHOMA )
) ss.
OKLAHOMA COUNTY )

I, E. Ray Long, state that I am the duly qualified and acting City Clerk of the City of Oklahoma City, Oklahoma; that the above schedules are true and correct excerpts of the portions of the Statement of Financial Condition, period ending Fiscal Year 1967-1968, Estimate of Needs 1968-1969 and Budget 1968-1969, pertaining to the Municipal Courts of the City of Oklahoma City, which were adopted and approved according to law by the Council of the City of Oklahoma, Oklahoma, on the 18th day of July, 1968, and certified to the County Excise Board of Oklahoma County, Oklahoma as required by law.

Witness my hand and seal this 27 day of January, 1969

/s/ E. RAY LONG
E. Ray Long, City Clerk

SEAL

## APPENDIX C

STATE OF OKLAHOMA )
) ss
OKLAHOMA COUNTY )

AFFIDAVIT

I, MARCIA SNEAD, state that I am a duly appointed, acting and qualified deputy court clerk of the Municipal Criminal Court of Record of the City of Oklahoma City, Oklahoma; that I have held such office prior to and during the year 1968; that my duties and responsibilities include the keeping of records in connection with the trials of cases in said courts; that during the year 1968, 2305 Informations were filed in said court charging the defendants therein with offenses against the ordinances of the City of Oklahoma City and that of said charges, the number of defendants in whose cases jury trials were commenced totaled 30.

Witness my hand and the seal of this Court this 28th day of January, 1969.

/s/ MARCIA SNEAD
Marcia Snead,
Deputy Court Clerk

SEAL: